

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AMPEX CORPORATION,

Plaintiff,

y.

C.A. No. 04-1373 (KAJ)

EASTMAN KODAK COMPANY,
ALTEK CORPORATION, and
CHINON INDUSTRIES, INC.,

REDACTED

Defendants.

**DECLARATION OF DAVID R. BRIGHTMAN IN SUPPORT OF AMPEX
CORPORATION'S OPPOSITION TO MOTION TO EXCLUDE THE
TESTIMONY OF CAROL SCOTT UNDER RULE 702**

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Attorneys for Plaintiff Ampex Corporation

Redacted Filing Date: June 20, 2006

Original Filing Date: June 13, 2006

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AMPEX CORPORATION,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	C.A. No. 04-1373-KAJ
)	
EASTMAN KODAK COMPANY,)	FILED UNDER SEAL
ALTEK CORPORATION, and)	
CHINON INDUSTRIES, INC.,)	
)	
<i>Defendants.</i>)	

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June 13, 2006

I, David R. Brightman, declare:

1. I am a member of the bar of the State of California, and an associate with the firm of Ropes & Gray, 525 University Avenue, Suite 300, Palo Alto, California, counsel to Plaintiff Ampex Corporation ("Ampex") in this case.

2. I make this declaration in support of Ampex's opposition to Defendants' Motion to Exclude the Testimony of Carol Scott Under Rule 702. Unless specifically stated otherwise, this Declaration is made based on personal knowledge.

3. Attached hereto as Exhibit 1 is a true and correct copy of the Initial Disclosure of Expert Testimony of Carol Scott.

4. Attached hereto as Exhibit 2 is a true and correct copy of selected pages from the Deposition Transcript of Carol Scott, taken in this action on May 4, 2006.

5. Attached hereto as Exhibit 3 is a true and correct copy of selected pages from the Initial Disclosure of Expert Testimony of Richard L. Donaldson.

6. Attached hereto as Exhibit 4 is a true and correct copy of selected pages from the Deposition Transcript of Richard Donaldson, taken in this action on May 12, 2006.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th day of June, 2006, at Palo Alto, California.



DAVID R. BRIGHTMAN

EXHIBIT 1

SEALED DOCUMENT

EXHIBIT 2

SEALED DOCUMENT

EXHIBIT 3

SEALED DOCUMENT

EXHIBIT 4

Richard L. Donaldson

05/12/2006

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

-----x
AMPEX CORPORATION,)
Plaintiff,)
v.) C.A. No.
EASTMAN KODAK COMPANY, et al.,) 04-1373 (KAJ)
Defendants.)
-----x

Videotaped Deposition of
RICHARD L. DONALDSON
Washington, D.C.
Friday, May 12, 2006
9:32 a.m.

Job No.: 22-78195

Pages 1 - 312

Reported By: Joan V. Cain

Richard L. Donaldson

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11:14:35 1 Q Under what circumstances?

11:14:37 2 A Well, you'd have to look at the facts. I
11:14:40 3 mean, you -- any kind of range of circumstances.
11:14:44 4 You may find a feature that by itself would -- would
11:14:48 5 be a driver of commercial success.

11:14:50 6 Q Well, put it in reverse and specific to
11:14:52 7 this case. If the jury concluded that the multi-up
11:14:55 8 feature didn't drive any sales of Kodak's digital
11:14:59 9 still cameras, is it reasonable for them to conclude
11:15:02 10 that the multi-up feature has not achieved
11:15:06 11 commercial success?

11:15:06 12 A No.

11:15:07 13 Q Why is that?

11:15:07 14 A Because that doesn't take into
11:15:09 15 consideration the risk and impact of not having that
11:15:13 16 feature when all your competitors have it, and in my
11:15:16 17 experience in -- in the business world and in
11:15:18 18 licensing, that's an extremely important aspect.

11:15:21 19 Q So, but if the jury concluded that it had
11:15:23 20 no impact on those sales, you'd -- you would
11:15:26 21 conclude -- you would say that that -- that it would
11:15:28 22 be unreasonable for them then to conclude that
11:15:31 23 the -- the multi-up feature has not achieved
11:15:34 24 commercial success?

Richard L. Donaldson

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11:20:47 1 A No. I don't think that has an impact.

11:20:49 2 Q Okay.

11:20:51 3 A Unless -- as I answered a little bit
11:20:54 4 earlier on that same question, unless the reason it
11:20:56 5 didn't infringe was an acceptable alternative to the
11:21:00 6 patent in suit.

11:21:02 7 Q If -- if the multi- -- I've got to make
11:21:05 8 sure I understand you. If the multi-up feature
11:21:07 9 that's used in professional cameras is an acceptable
11:21:12 10 noninfringing alternative to the claimed technology,
11:21:16 11 that's something you'd like to know about?

11:21:17 12 A I see.

11:21:18 13 Q But you don't know if that's the case one
11:21:20 14 way or the other?

11:21:20 15 A No. I do know that. I've been told that
11:21:23 16 it's not the case.

11:21:23 17 Q You've been told that the professional --
11:21:25 18 the multi-up feature in the professional cameras is
11:21:29 19 not acceptable noninfringing alternatives?

11:21:32 20 A I've been told that there are no acceptable
11:21:34 21 noninfringing alternatives to the patent in suit for
11:21:37 22 the accused cameras.

11:21:39 23 Q Okay. Do you know if all of Kodak's
11:21:41 24 current digital cameras include the multi-up

Richard L. Donaldson

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11:21:44 1 feature?

11:21:45 2 A My understanding is they do.

11:21:46 3 Q If they -- if they didn't, would that have
11:21:49 4 any impact on your opinions?

11:21:51 5 A I don't think so.

11:21:53 6 Q Why's that?

11:21:54 7 A Well, if you could tell me that 95 percent
11:21:56 8 of them don't, that would. My understanding is that
11:21:59 9 all of them do, but so long as during a period of
11:22:08 10 time Kodak would offer both -- would offer a camera
11:22:11 11 set that -- where customers who want the multi-up
11:22:16 12 feature could purchase a Kodak camera, that would
11:22:18 13 lessen the impact on them of having some cameras
11:22:21 14 that didn't have that feature. They could still
11:22:25 15 sell that customer a Kodak camera. But if none of
11:22:28 16 their cameras had that feature, then they'll go to
11:22:32 17 Canon or they'll go to Sony or they'll go to someone
11:22:34 18 else, and that would be an unacceptable risk for
11:22:36 19 Kodak marketing.

11:22:38 20 Q Based on that, is it your opinion, sir,
11:22:42 21 that if Kodak did not have a multi-up feature, then
11:22:46 22 a consumer would go to some other manufacturer to
11:22:50 23 purchase their digital still camera?

11:22:52 24 A I think that is an unacceptable risk to

CERTIFICATE OF SERVICE

I, Rodger D. Smith, II, hereby certify that on June 13, 2006, I caused to be electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing(s) to the following:

Collins J. Seitz, Jr., Esquire
Jaclyn Mason, Esquire
Connolly, Bove, Lodge & Hutz LLP

and that I caused copies to be served upon the following in the manner indicated:

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